(Slip Opinion)

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BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In re:	)	
SchoolCraft Construction, Inc.	)	CAA Appeal No. 98-3
Docket No. CAA-010A-1993	)	

[Decided July 7, 1999]

FINAL ORDER

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Kathie A. Stein.

SCHOOLCRAFT CONSTRUCTION, INC.

CAA Appeal No. 98-3

FINAL ORDER

Decided July 7, 1999

Syllabus

This is an appeal by SchoolCraft Construction Company, Inc. ("SchoolCraft") from a Decision Following Remand dated June 23, 1998. This matter arises out of an administrative enforcement action filed against SchoolCraft by the Director of the Air and Radiation Division, U.S. Environmental Protection Agency Region V ("Region"). By the Decision Following Remand, the Presiding Officer held SchoolCraft liable for five violations of Clean Air Act ("CAA") § 112, 42 U.S.C. § 7412, and assessed an aggregate penalty for those violations of $20,000.

Section 112 of the Clean Air Act lists asbestos as a "hazardous air pollutant" and requires the EPA to adopt emission standards for its control. Under this authority, the EPA has promulgated National Emission Standards for Hazardous Air Pollutants for asbestos (the "Asbestos NESHAP"), which imposes upon "owners" and "operators" of demolition or renovation activities certain notification requirements and work practice standards.

In June 1993, the Region filed a complaint (the "Complaint") against SchoolCraft and Seneca Asbestos Removal and Control, Inc. ("Seneca") for violations of the Asbestos NESHAP that allegedly occurred during a renovation project at the C.O. Cline Elementary School ("Cline Elementary"), which is owned by Centerville, Ohio City Schools ("Centerville"). The Complaint alleged five violations that are at issue in this appeal: Counts I and II – failure to provide timely written and telephone notice required by the Asbestos NESHAP that asbestos removal would begin on a date later than the date specified in the original notice of renovation; Counts III and IV – failure to adequately wet regulated asbestos-containing material ("RACM") being stripped from the facility and ensure that it remained wet until collected and contained or treated in preparation for disposal; and Count V – failure to post evidence of the on-site representative's training in the Asbestos NESHAP. The Complaint alleged that both

SchoolCraft and Seneca were "operators" of the renovation project and were liable for the violations.

On January 2, 1997, the administrative law judge issued his Initial Decision in this matter dismissing the Complaint against SchoolCraft on the grounds that it was not an "owner" or "operator" within the meaning of the Asbestos NESHAP. The Region thereafter appealed to this Board and, in February 1998, the Board entered an order reversing the dismissal of the Complaint and remanding this matter for further proceedings. *See In re SchoolCraft, Inc.*, CAA Appeal No. 97-1 (EAB, Feb. 9, 1998) ("*SchoolCraft I*").

On remand, a substitute administrative law judge was appointed, who issued his Decision Following Remand on June 23, 1998, holding SchoolCraft liable for the charged violations and assessing a penalty of $20,000. SchoolCraft has now appealed. In this appeal, SchoolCraft raises issues regarding whether the Region established, by a preponderance of the evidence, that the violations occurred, and whether SchoolCraft should have been assessed penalties of $20,000 for the violations.

HELD: (1) Regarding Counts I and II, the regulations clearly place the responsibility for providing the required telephone and written notice on "each" operator. Since *SchoolCraft I* held that SchoolCraft was an operator of the Cline Elementary renovation project and since SchoolCraft does not challenge the finding that the revised notices were not given at the required times, it therefore follows that SchoolCraft is liable for the failure to provide the telephone and written notices required by the regulations.

(2) Regarding Counts III and IV, it is not necessary for the Region to show that actual asbestos emissions occurred; the testimony of the Region's witness that he saw recently stripped, dry RACM was sufficient evidence to establish that the RACM was not adequately wet to prevent releases of asbestos particles. Also, SchoolCraft cannot rely upon Seneca's contractual agreement to perform the asbestos removal work to show that SchoolCraft should not be held liable for the failure to adequately wet RACM.

(3) SchoolCraft is liable for the violation charged in Count V because the on-site representative's training certification was not located on-site on the day of the inspection as required by the Asbestos NESHAP.

(4) The penalty assessed by the Presiding Officer is upheld. SchoolCraft has not shown that the Presiding Officer abused his discretion or committed any clear error in his analysis and the penalty assessed by the Presiding Officer falls within the range of penalties suggested by the applicable Agency penalty policy.

Before Environmental Appeals Judges Ronald L. McCallum, Edward E. Reich, and Kathie A. Stein.

Opinion of the Board by Judge Reich:

This is an appeal by SchoolCraft Construction Company, Inc. ("SchoolCraft") from a Decision Following Remand dated June 23, 1998, entered in the above-captioned matter by Administrative Law Judge Edward J. Kuhlmann (the "Presiding Officer"). This matter arises out of an administrative enforcement action filed against SchoolCraft by the Director of the Air and Radiation Division, U.S. Environmental Protection Agency Region V ("Region"). By the Decision Following Remand, the Presiding Officer held SchoolCraft liable for five violations of Clean Air Act ("CAA") § 112, 42 U.S.C. § 7412, and assessed an aggregate penalty for those violations of $20,000.

The principal issues raised by SchoolCraft on appeal are whether the Region established, by a preponderance of the evidence, that the violations occurred, and whether SchoolCraft should have been assessed penalties of $20,000 for the violations. The Region has not filed its own appeal, but it does oppose SchoolCraft's appeal. For the reasons set forth below, we uphold the Presiding Officer's Decision Following Remand.

I. *BACKGROUND*

A. *Statutory and Regulatory Background*

Section 112(b)(1) of the Clean Air Act, 42 U.S.C. § 7412(b)(1), lists certain "hazardous air pollutants." Section 112(d) requires the Administrator of the United States Environmental Protection Agency (the "EPA" or "Agency") to adopt emission standards for each category of

major sources and area sources[1] of each listed hazardous air pollutant. Such emission standards can include work practice standards. CAA § 112(d)(2). These emission standards are known as National Emission Standards for Hazardous Air Pollutants ("NESHAPs"). Asbestos is a listed hazardous air pollutant and the EPA has promulgated a NESHAP for asbestos (the "Asbestos NESHAP"), which is codified at 40 C.F.R. part 61, subpart M.

The Asbestos NESHAP imposes mandatory notification requirements. The regulations also impose work practice standards when, among other circumstances, a demolition or renovation activity involves removal of at least 260 linear feet of regulated asbestos-containing material ("RACM")[2] on pipes or at least 160 square feet of

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[1]The terms "major source" and "area source" are defined at CAA § 112(a) (1) and (2). A "major source" is "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." *Id.* § 112(a)(1). An "area source" is "any stationary source of hazardous air pollutants that is not a major source." *Id.* § 112(a)(2).

[2]The term RACM is defined by the regulations as follows:

> Regulated asbestos-containing material (RACM) means (a) Friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by this subpart.

(continued...)

RACM on other components of the facility. 40 C.F.R. § 61.145(a). Where the applicable threshold for RACM has been met, section 61.145(b) sets forth specific requirements regarding notification to the EPA of renovation activity by the "owner" or "operator" of the activity. In particular, the Asbestos NESHAP requires that each owner or operator of a demolition or renovation activity provide to EPA before commencement of the asbestos activity written notice of the scheduled start date and, if the scheduled start date is changed, each owner or operator must provide to EPA, before the original start date, both telephone and written notice of the new start date. *Id.* § 61.145(b)(3)(iv)(A)(1), (2).

The Asbestos NESHAP, at section 61.145(c), also sets forth work practice standards that must be followed by owners and operators of the demolition or renovation activity where the applicable threshold amount of RACM has been met. In particular, at issue in this case are the requirements that each owner or operator "adequately wet the RACM during the stripping operation," 40 C.F.R. § 61.145(c)(3), "ensure that it remains wet until collected or treated in preparation for disposal," *id.* § 61.145(c)(6)(i), and post at the demolition or renovation site "[e]vidence that the required training [in the provisions of the Asbestos NESHAP] has been completed." *Id.* § 61.145(c)(8).

B. *Factual and Procedural Background*

In 1989, SchoolCraft was hired by Centerville, Ohio City Schools ("Centerville") to prepare Centerville's asbestos management plan, pursuant to the Asbestos Hazard and Emergency Response Act ("AHERA"), 15 U.S.C. §§ 2641-2656. While preparing this plan, asbestos-containing materials were identified at the C.O. Cline Elementary School ("Cline Elementary"), as well as other school buildings owned by Centerville. Thereafter, Centerville decided to abate

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[2](...continued)
40 C.F.R. § 61.141.

the asbestos at Cline Elementary and hired SchoolCraft to prepare the specifications for the abatement project.

Centerville used the specifications prepared by SchoolCraft to solicit bids for the Cline Elementary abatement project and, in consultation with SchoolCraft, selected Seneca Asbestos Removal and Control, Inc. ("Seneca") to perform the asbestos abatement work. Seneca was required by its contract with Centerville to comply with all project specifications and to comply with the Asbestos NESHAP, including but not limited to the applicable work practice and notification requirements. Under the project specifications, SchoolCraft was responsible for coordinating the various renovation activities at Cline Elementary, including the work of Seneca. The project specifications gave SchoolCraft substantial supervisory authority over the whole renovation project.

Seneca initially satisfied the notice requirement of the Asbestos NESHAP by informing EPA's delegate, the Regional Air Pollution Control Agency ("RAPCA"),[3] that the asbestos activity would begin on June 15, 1992, and end on August 7, 1992. However, when RAPCA inspector Jack D. Hemp went to Cline Elementary on June 16, 1992, to conduct an inspection, the work had not yet begun. On June 17, 1992, RAPCA received notification that the start date had been changed, and that the work would commence on June 17, 1992. A second inspection was thereafter conducted on June 30, 1992, by another RAPCA inspector, Jeffrey Adams.

In June 1993, the Region filed a complaint (the "Complaint") against SchoolCraft and Seneca for violations of the Asbestos NESHAP

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[3]Pursuant to 40 C.F.R. § 61.04(b), EPA has delegated authority to implement and enforce the Asbestos NESHAP to state and local agencies in many locations. In Montgomery County, Ohio, where Cline Elementary is located, EPA has delegated the authority to implement and enforce the Asbestos NESHAP to a local air pollution control authority, the Regional Air Pollution Control Agency. *Id.* § 61.04(b)(KK)(vi).

that allegedly occurred during the renovation project at Cline Elementary. The Complaint alleged five violations that are at issue in this appeal:[4] Count I – failure to provide notice by telephone before the original starting date for asbestos removal that asbestos removal would begin on a date later than the date specified in the original notice of renovation, in violation of 40 C.F.R. § 61.145(b)(3)(iv)(A)(1); Count II – failure to provide written notice before the original starting date for asbestos removal that asbestos removal would begin on a date later than the start date specified in the original notice of renovation, in violation of 40 C.F.R. § 61.145(b)(3)(iv)(A)(2); Count III – failure to adequately wet RACM being stripped from the facility, in violation of 40 C.F.R. § 61.145(c)(3); Count IV – failure to adequately wet all RACM and to ensure that it remained wet until collected and contained or treated in preparation for disposal, in violation of 40 C.F.R. § 61.145(c)(6)(i); and Count V – failure to post evidence of the on-site representative's training in the Asbestos NESHAP, in violation of 40 C.F.R. § 61.145(c)(8).

The Complaint alleged that both SchoolCraft and Seneca were "operators" of the renovation project and were liable for the violations. The Complaint proposed a civil penalty of $62,000 for the five alleged violations. However, the Complaint requested that only $20,000 of the proposed penalty be assessed against SchoolCraft for its role as operator (the Complaint requested that the remaining $42,000 of the proposed penalty be assessed against Seneca).

Administrative Law Judge Daniel M. Head ("ALJ Head") held an evidentiary hearing in September 1996, and on January 2, 1997, issued his Initial Decision in this matter. *See In re Seneca Asbestos Removal & Control, Inc.*, Dkt. No. CAA-010A-1993 (ALJ, Jan. 2, 1997) (the "Initial Decision"). ALJ Head found that the dispositive issue was "whether SchoolCraft can be held liable for any NESHAP asbestos

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[4]The Complaint alleged nine counts. However, only the five counts identified above concerned work performed at Cline Elementary.

violations as an owner or operator of the renovation activities involving asbestos removal at Cline Elementary." Initial Decision at 9.

ALJ Head concluded that SchoolCraft was not an "owner" or "operator" within the meaning of the Asbestos NESHAP. Upon finding that SchoolCraft was not an owner or operator, ALJ Head held that the Region had failed to establish a *prima facie* case against SchoolCraft and, therefore, he dismissed the Complaint with prejudice pursuant to 40 C.F.R. § 22.20(a). *Id.* at 28. The Region thereafter appealed to this Board, requesting that the dismissal be reversed.

After considering the briefs of both the Region and SchoolCraft and after oral argument before the Board on July 9, 1997, the Board entered an order reversing the dismissal of the Complaint and remanding this matter for further proceedings. *See In re SchoolCraft, Inc.*, CAA Appeal No. 97-1 (EAB, Feb. 9, 1998) ("*SchoolCraft I*"). Because ALJ Head had dismissed the Complaint on the ground that the Region had failed to establish that SchoolCraft was an "operator," the Board focused its analysis on the operator issue and, upon analysis, held that SchoolCraft was an "operator" of the Cline Elementary renovation activity and, as such, was potentially liable for any violations of the Asbestos NESHAP that occurred during that activity.

However, because ALJ Head made no explicit findings as to whether or not the alleged violations actually occurred, we remanded this case to the Presiding Officer to make "specific findings of fact and conclusions on this issue." *Id.* at 26. If the violations were found to have occurred, the Presiding Officer was to consider an appropriate penalty for such violations. *Id.* at 27.

On June 23, 1998, the Presiding Officer entered the Decision Following Remand,[5] holding SchoolCraft liable for the charged violations.

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[5]The Decision Following Remand was entered by Administrative Law Judge

(continued...)

To establish SchoolCraft's liability in this case, the Region was required to show by a preponderance of the evidence that: 1) SchoolCraft was an "owner or operator of a demolition or renovation activity" as defined by the asbestos NESHAP (40 C.F.R. § 61.141); 2) the amount of the RACM involved in the Cline renovation met or exceeded the applicable regulatory threshold (40 C.F.R. § 61.145(A)(4)); and 3) the alleged violations of the renovation standard actually occurred. *SchoolCraft I* at 14. Because SchoolCraft admitted that the amount of RACM involved in the renovation met or exceeded the regulatory threshold, Answer ¶ 12, and because in *SchoolCraft I* we held that SchoolCraft is an "operator" within the meaning of the Asbestos NESHAP, the Decision Following Remand focused on the remaining question of whether the Region had established the facts necessary to prove violations of the specific renovation standards as alleged in the Complaint.

In the Decision Following Remand, the Presiding Officer held that the Region had established, by a preponderance of the evidence, that each of the alleged violations had, in fact, occurred. Decision Following Remand at 3-8. The Presiding Officer, therefore, held that SchoolCraft is liable for the violations as alleged. The Presiding Officer also reviewed and extensively discussed the method by which the proposed $20,000 penalty had been calculated by the Region and, finding that the penalty was appropriate under the circumstances, the Presiding Officer assessed a civil penalty against SchoolCraft in the amount of $20,000 for the five violations of the Asbestos NESHAP. *Id.* at 9-15. SchoolCraft has now appealed from the Presiding Officer's Decision Following Remand, arguing that the Presiding Officer erred in his liability determinations and in his penalty assessment.

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[5](...continued)
Kuhlmann because ALJ Head had retired after the Initial Decision was entered. Decision Following Remand, at 1 n.1.

II. *ANALYSIS*

A. *Liability Issues*

On appeal, SchoolCraft re-raises (without additional briefing) the issue of whether it was an "operator" within the meaning of the Asbestos NESHAP in connection with the removal of asbestos at Cline Elementary. Because in *SchoolCraft I* we addressed SchoolCraft's arguments regarding whether it is an "operator," and because that ruling established the law of the case in successive stages of this same litigation, we need not discuss those arguments in this decision, noting instead that there are no grounds for reconsideration. *See In re J.V. Peters & Co.*, RCRA (3008) Appeal No. 95-2, slip op. at 22-23 (EAB, Apr. 14, 1997), 7 E.A.D. __ (discussing law of the case doctrine). In the following discussion, we consider and reject the issues raised as to whether the specific renovation standards were in fact violated as found by the Presiding Officer.

1. *Counts I and II: Whether EPA Was Properly Informed of the New Start Date as Required by 40 C.F.R. § 61.145(b)(3)(IV)(A)(1), (2)*

Counts I and II of the Complaint charged SchoolCraft with violating the Asbestos NESHAP's requirement that EPA be given both telephone and written notice of changes in the date upon which asbestos stripping or removal activity is to take place. The Asbestos NESHAP requires that each operator of a demolition or renovation activity provide to EPA written notice at least 10 working days before commencement of the asbestos activity of, among other things, the "[s]cheduled starting and completion dates of asbestos removal work." 40 C.F.R. § 61.145(b)(1), (3)(i), (4)(viii). If the activity is going to begin on a date other than the one stated in the original notice, the operator must further "notify [EPA] of the new start date by telephone as soon as possible *before* the original start date" and provide EPA "written notice of the new start date as soon as possible before, *and no later than, the original start date*." *Id.* § 61.145(b)(3)(iv)(A)(1), (2) (emphasis added).

In the Decision Following Remand, the Presiding Officer found that SchoolCraft, as an operator of the renovation activity, committed two violations of the CAA by failing to provide prior to the original start date both telephone and written notice of the new start date as required by 40 C.F.R. § 61.145(b)(3)(iv)(A)(1), (2). Decision Following Remand at 5. The Presiding Officer found that Seneca originally gave EPA notice that the removal and stripping of RACM at the Cline Elementary School would start on June 15, 1992. However, when the RAPCA inspector, Jack D. Hemp, went to inspect the removal work on June 16, 1992, the removal activity had not been started. *Id.* at 4. As of that date, RAPCA had not received telephone or written notice that the asbestos activity would not begin on the start date indicated in the original notice. *Id.* Subsequently, on June 17, 1992, RAPCA received a revised notification stating that the new start date would be June 17, 1992. *Id.*

On appeal, SchoolCraft raises a variety of arguments as to why it believes that it should not be held liable for violations of section 61.145(b)(3)(iv)(A)(1) and (2). However, none of its arguments go to the central issues of whether the required telephone and written notices of the revised start date were given at the required time (*i.e.*, prior to the date originally specified as the start date).

Instead, SchoolCraft raises a variety of extraneous issues. It suggests that the inspector could have called before conducting his inspection on June 16, 1992, in order to avoid any inconvenience caused by the inspector going to the site before the asbestos activity had started. SchoolCraft's Brief at 8. It also argues that the purpose of notice was served because RAPCA was able to conduct a subsequent inspection on June 30, 1992, at a time when the asbestos activity was on going. *Id.* at 8-9. SchoolCraft also argues that even if a "technical" notice violation occurred, the responsibility for the violation was that of Seneca, not SchoolCraft. *Id.* at 9-10.

Upon review we find the Presiding Officer's reasons for rejecting each of SchoolCraft's arguments are both sufficient and correct and, therefore, we uphold the findings of liability on Counts I and II. The

regulations clearly place the responsibility for providing the required telephone and written notice on "each" operator. 40 C.F.R. § 61.145(b). Since we held in *SchoolCraft I* that SchoolCraft was an operator of the Cline Elementary renovation project and since SchoolCraft does not challenge the finding that the revised notices were not given at the required times, it therefore follows that SchoolCraft is liable for the failure to provide the telephone and written notices required by the regulations.[6] SchoolCraft's attempts to escape liability by conjuring up arguments as to the alleged purposes or policies underlying the regulations are unavailing because such arguments cannot defeat the plain language of the regulations. In addition, we note that the policies that actually underlie the regulations are different from the policies postulated by SchoolCraft. *See* Decision Following Remand at 3-5. The Presiding Officer correctly observed that a purpose of the requirement that telephone and written notice of a change in start date be given, as stated in the preamble to the final rulemaking, is to prevent "'useless visits to jobs that have been rescheduled because a written renotification of a change in start date was not received in time.'" *Id.* at 5, quoting 55 Fed. Reg. at 48,411-12. Here, the failure to provide the required notice resulted in precisely what the rule was intended to prevent: a useless visit to Cline Elementary on June 16, 1992, prior to the actual start date of the asbestos removal. *Id.* SchoolCraft is liable for the violations alleged in Counts I and II of the Complaint.

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[6]We note, however, that the Region's proposed penalty for the violations alleged in Counts I and II took into account the fact that SchoolCraft was not the only operator of the project. The penalty was calculated first based upon an assigned penalty amount as if there was only one operator ($2,000), which was then divided by the number of operators (2) to arrive at the proposed penalty of $1,000 assessed against SchoolCraft for the notice violations alleged in Counts I and II. Decision Following Remand at 12.

2. *Counts III and IV: Whether All RACM Being Stripped Was Adequately Wet Before Stripping and Whether It Was Wetted to Ensure that It Would Remain Adequately Wet as Required by 40 C.F.R. § 61.145(c)(3), (6)(i)*

Counts III and IV of the Complaint charged SchoolCraft with violating the requirement that all RACM must be adequately wetted before stripping and that it must be wetted to ensure that it remains adequately wet until collected and contained or treated in preparation for disposal. 40 C.F.R. § 61.145(c)(3) and (6)(i). In essence, these work practice standards require a person engaged in the removal of asbestos-containing material to adequately wet the material prior to removal and then to keep the material adequately wet until it is collected for disposal. *In re Echevarria*, 5 E.A.D. 626, 633 (EAB 1994). The term "adequately wet" is defined in the regulations as follows:

> [S]ufficiently mix or penetrate with liquid to prevent the release of particulates. If visible emissions are observed coming from asbestos-containing material, then that material has not been adequately wetted. However, the absence of visible emissions is not sufficient evidence of being adequately wet.

40 C.F.R. § 61.141.

In the Decision Following Remand, the Presiding Officer found that, during the June 30, 1992 inspection, the RAPCA inspector, Jeffrey Adams, observed "100 feet of ceiling material in a pile approximately three feet high" and "observed that the material was dry and that it could be crumbled with his hand." *Id.* at 6. Mr. Adams testified that the material had been recently removed from the facility. *Id.* at 6-7. The Presiding Officer further noted that Mr. Adams "found no evidence of adequate wetting near the ceiling material." *Id.* at 7. In addition, the Presiding Officer found that "[r]espondent did not introduce any evidence that the asbestos material cited in count III was in any condition other

than that observed by [Mr. Adams]." *Id.* Mr. Adams took samples from the pile of ceiling material, which were tested and confirmed to contain RACM. *Id.* at 6.[7] The Presiding Officer concluded that the evidence established that the RACM was not adequately wet when stripped in violation of section 61.145(c)(3), nor was it ensured that the RACM remained adequately wet until collected and contained or treated in preparation for disposal in violation of section 61.145(c)(6)(i). *Id.* at 7.

On appeal, SchoolCraft does not challenge the factual findings identified above that underlie the Presiding Officer's liability determination. Instead, SchoolCraft argues that since the purpose of the work practice rules is to prevent the release of friable asbestos, air sampling conducted by an industrial hygienist at the same time as Mr. Adams' inspection[8] should be dispositive as to whether "there were any actual emissions." SchoolCraft's Brief at 12. SchoolCraft states further that:

> The key purpose is to prevent the release of particulates. In this instance, there was no release of particulates.

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[7]As noted *supra* note 1, RACM means, among other things, friable asbestos-containing material, which is defined as any material that contains more than 1 percent asbestos (defined to include, among other things, "asbestiform varieties of serpentinite (chrysotile)") and that can be crumbled by hand pressure. 40 C.F.R. § 61.141. The samples collected by Mr. Adams contained approximately 11-13 percent chrysotile asbestos and could be crumbled by hand. Decision Following Remand at 6.

[8]SchoolCraft points to Bates stamped pages JX0000211 through JX0000270 (Exhibit No. 8) of the parties' Joint Exhibits (admitted into evidence at page 33 of the Transcript) to support its argument that "there was, in fact, an industrial hygienist on site who was performing air sampling." SchoolCraft's Brief at 12. Because we conclude that it is not necessary to prove that asbestos has become airborne in order to show a violation of the wetting requirement, we express no opinion regarding these pages of the Joint Exhibits.